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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,296	01/24/2002	R. Eric Montgomery	04163-00139	9773
26565	7590	04/21/2004	EXAMINER	
MAYER, BROWN, ROWE & MAW P.O. BOX 2828 CHICAGO, IL 60690				JAGOE, DONNA A
		ART UNIT		PAPER NUMBER
		1614		

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/056,296	MONTGOMERY, R. ERIC	
	<b>Examiner</b>	<b>Art Unit</b>	
	Donna Jagoe	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 25 February 2004.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-5,7 and 11-44 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5,7 and 11-44 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

***Claims 1-5, 7, and 11-44 are pending in this application.***

***Claim Objections***

Claim 18 is objected to because of the following informalities: the claim lists abrasives in duplicate (see line 3 of the claim). Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-5, 7 and 11-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Showa Denko KK JP 62096408 (AG) in view of Pera U.S. Patent No. 4,775,525.

The claims are drawn to a composition comprising ascorbyl-2-phosphate or a sodium or potassium salt thereof and further comprising calcium ions wherein the composition is mixed with an orally acceptable carrier, and further comprising a calcium chelating agent, a tartar control agent, a water soluble fluid, water soluble solid, humectant, thickener, surfactant, sweetener, flavorant, colorant, abrasive, stabilizer, fluoride containing compound, anticaries agent, antimicrobial agent, essential oil and a desensitizing agent.

Showa Denko KK teach ascorbic acid phosphoric acid ester or it's salt (e.g.  $\text{Na}^+$ ,  $\text{K}^+$ ,  $\text{Ca}^{++}$  or  $\text{Mg}^+$  salt) in an oral composition to be used for alveolar pyorrhea, cleaning teeth, removing bad breath and washing the teeth. It is in compositions such as toothpaste, chewing gum and troches. Working example I teaches calcium diphosphate dihydrate (source of calcium/abrasive), sodium carboxymethylcellulose and carrageenan (thickeners), glycerin (water soluble liquid), sorbital (water soluble solid), fragrance (flavor), preservative (antimicrobial), sodium saccharin (sweetener), sodium lauryl sulfate (surfactant), and ascorbic acid magnesium phosphate.

It does not teach the desensitizing agents of claims 40-44 and it does not teach the non water-soluble solid and liquid.

Pera (4,775,525) teaches strontium as a desensitizing agent for the teeth (column 5, lines 27-43).

It would have been made obvious to one of ordinary skill in art at the time it was made to incorporate desensitizing agents and vegetable oils and wax. Such a modification would have been motivated by the reasoned expectation of producing a dentifrice composition which is effective in comprehensively cleaning teeth and desensitizing teeth of individuals that have become sensitized. Strontium is a well-known desensitizer, which is known and used in dentifrices as evidenced by the teachings of Pera (4,775,525). Vegetable oil would aid in mixing the dentifrice composition and the wax would effectively coat the teeth and add shine to the teeth.

Thus the claims fail to patentably distinguish over the state of the art as represented by the cited reference.

No claims are allowed.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donna Jagoe whose telephone number is (571) 272-0576. The examiner can normally be reached on Monday through Friday from 9:00 A.M. - 5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel can be reached on (571) 272-0584. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Donna Jagoe  
Patent Examiner  
Art Unit 1614

4/19/04



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